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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,894	10/12/2004	Hakan BERG	8002.002.NPUS00	5893
28694 7590 06/10/2008 NOVAK DRUCE + QUIGG LLP 1300 EYE STREET NW SUITE 1000 WEST TOWER WASHINGTON, DC 20005				
EXAMINER				
PATEL, NIHIR B				
ART UNIT		PAPER NUMBER		
3772				
MAIL DATE		DELIVERY MODE		
06/10/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/711,894

Applicant(s)

BERG, HAKAN

Examiner

NIHIR PATEL

Art Unit

3772

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02.19.2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 20, 22 and 26-29 is/are rejected.
- 7) ☒ Claim(s) 5-19, 21, 23-25 and 30-44 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed on February 19th, 2008 have been fully considered but they are not persuasive. The applicant argues that examiner has force-fit the words of the claims onto the device shown in Brown. The applicant is referring to the exhaust valve as a suction arrangement suspendable from the mask. The examiner disagrees with the applicant's argument. Col. 3 lines 1-15 clearly states the function of the exhaust valve in reference to being a suction arrangement. The examiner argues that the mask arrangement of Brown is not able to capture gas released from the patient's mouth into the breathing space of a health care provider. Col. 2 lines 35-45 of the Brown reference states that "Thus there is provided a special anaesthetic mask which is connected to an exhaust pump such that gas exhaled by the patient and **gas escaping around the mask** are collected and pumped to a point exterior of the room...". The recitation "**gas escaping around the mask**" in a broad sense is defined as the personal breathing space.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims **1-4 and 26-29** are rejected under 35 U.S.C. 102(b) as being anticipated by Brown (US 4,015,598).
4. **As to claims 1 and 26**, Brown teaches an anaesthetic system that comprises a suction arrangement **31 (see figure 3 and column 2 lines 65-67)** suspendable from a patient's nasal

mask **19** (see **figure 3 and column 2 lines 1-10**) used for administering gaseous analgesia or anesthetic to a patient; the suction arrangement having a suction inlet sufficiently **(when the spring 34 is lifted it creates an inlet)** positionable proximate the patient's mouth (see **figure 1**) so as to scavenge tainted escape gas released from the patient's mouth into the personal breathing space of a health care provider when the health care provider is positioned adjacent the patient; and the suction arrangement further comprising an exhaust outlet **(see figure 2 and column 2 lines 40-45)** interconnected with a vacuum source **21** (see **figure 2 and column 2 lines 40-45**) for instituting tainted escape gas scavenging proximate the patient's face for the benefit of the health care provider by limiting exposure of the health care provider to tainted escape gas.

5. **As to claims 2 and 27**, Brown teaches an apparatus that further comprises an adjustable interconnection **42** (see **figure 3 and column 3 lines 55-65**) configured to mount the suction arrangement to the patient's nasal mask, the adjustable interconnection enabling variable positioning of the suction inlet relative to the patient's mouth.
6. **As to claims 3 and 28**, Brown teaches an apparatus that further comprises an adjustable interconnection **42** (see **figure 3 and column 3 lines 55-65**) mounting the suction arrangement upon the patient's nasal mask, the adjustable interconnection enabling variable positioning of the suction inlet relative to the patient's mouth.
7. **As to claims 4 and 29**, Brown teaches an apparatus wherein the mounting of the suction arrangement upon the patient's nasal mask is an exclusive point-of-suspension of the suction arrangement below the nose of the patient (see **figure 1**).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims **20 and 22** are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 4,015,598).

11. **As to claims 20 and 22**, Brown substantially discloses method steps of suspending a suction arrangement **31** from the patient's nasal mask used for administering gaseous analgesia or anesthetic to the patient; positioning a suction inlet of the suction arrangement proximate the patient's mouth so as to scavenging tainted escape gas released from the patient's mouth into the personal breathing space of a health care provider when the health care provider is positioned adjacent to the patient; and interconnecting an exhaust outlet of the suction arrangement to a vacuum source (see **figure 2**) and instituting tainted escape gas scavenging proximate to the patient's face thereby benefiting the health care provider by limiting exposure of the health care provider to tainted escape gas.

The method steps would have been obvious because they would have resulted from the use of the device of Brown.

Allowable Subject Matter

12. Claims 5-19, 21, 23-25 and 30-44 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not disclose a suction arrangement and the mounting together establishing a cantilever suspension of the suction inlet below the nose of the patient.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NIHIR PATEL whose telephone number is (571)272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nihir Patel/
Examiner, Art Unit 3772
/Kevin C. Sirmons/
Supervisory Patent Examiner, Art Unit 3767

